20752

Supreme Court of the United States.

No. 1063.

THE COUNTY OF SAN MATEO, PLAINTIFF IN ERROR,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY,
DEFENDANT IN ERROR.

ARGUMENT OF S. W. SANDERSON, ESQ., COUNSEL FOR DEFENDANT.

Mr. SANDERSON said :

May it please the Court, before commencing my argument, I desire to make one or two observations in relation to certain misconceptions of counsel in the very able and forcible arguments which have been made upon the other side. Counsel have put us in the position of maintaining propositions which we do not maintain. We have been misunderstood or misrepresented. It has been assumed upon the other side, first, that we maintain the proposition that this question of "due process of law" imports into the taxing system of the States judicial proceedings or methods in the matter of making assessments or ascertaining the value of property for the purposes of taxation. We maintain no such doctrine. On the contrary, we admit that "due process of law" does not require a resort to judicial proceedings in the matter of assessments; that

taxes may be levied and collected in a summary manner by administrative boards and officers without the intervention of any of those proceedings which are appropriate, and which, in the administration of justice, are generally employed by the courts. All we claim on that head is this: that at some stage of the proceedings, between the commencement and the time at which the assessment becomes final, the taxpayer shall have notice, or an opportunity to be heard as to the value of his property, before the assessor, or before some other officer or board appointed by law.

Again, we have been placed in the position of claiming that it is an indispensable feature in tax laws that a board of equalization should be provided, before which taxpayers may go for the purpose of having their assessments as made by the assessor reviewed. We have contended for no such proposition. Our position on that head is this: that if the State creates a board of equalization for a portion of its taxpayers, and enables them to have a review before such board of the action of the assessor, then we say it is the duty of the State also to furnish a board of equalization for all other taxpayers.

It is also stated upon the other side that we claim that the Fourteenth Amendment to the Federal Constitution prohibits the States from passing any laws, except such as shall act equally and uniformly upon all persons and upon all things in the State. We make no such claim. Our position upon that point is, that the Fourteenth Amendment requires that State legislation shall operate equally and uniformly upon all persons and upon all things upon which it is designed to operate at all; that is to say, upon all persons and all things which stand in the same category, or stand in the same relation to the law.

For example, a law in relation to bishops, and affecting bishops only, is a general law; and if it operates upon bishops only, and yet operates equally upon them all, there

can be no objection to it on the score of validity. We only hold in this respect, that tax laws shall operate equally and uniformly upon the property which is taxed, and upon the owners of such property; not that they shall operate universally upon all persons or upon all kinds of property. We do not claim that it is not within the power of the States to select certain kinds or classes of property for taxation, and exempt from taxation all other property. All we claim is that when a State has selected property for the purpose of taxation, it must employ the same system, mode, and method, in ascertaining the value of all such property, and must impose upon all of it, without discrimination, the same burden, or rate of taxation. This much in explanation of the propositions for which we contend.

May it please the Court, there is a preliminary question, presented by the record in this case which, so far, has not been considered by counsel, and to which it is necessary to call the attention of the Court for a few moments. The question is, whether a certain apparent statute of the State of California is law or is not law. If your honors will turn to page 12 of my brief you will find there quoted section 3664 of the political code of the State of California. On page 14, a little below the middle of the page, you will find a bracket, the next word being "respectively." The validity of the remainder of that section, from the bracket on, is challenged by us. The history of this bill is this: In 1880 the legislature passed an act ——

The CHIEF JUSTICE—Is all before that bracket good and valid?

Mr. SANDERSON—Yes, sir.

The CHIEF JUSTICE—It is only this part after the bracket that has been disputed?

Mr. SANDERSON—Yes, sir. It may seem strange that we should question the validity of a portion of the act and not the whole, for it would seem that if a portion of the act was invalid the whole would be; that I am about to explain.

In 1880 an act was passed amending certain enumerated sections of the political code and adding two new sections. The constitution of California requires that the title to a bill shall state the subject; that the bill shall have but one object, and that such object shall be expressed in its title. Now, it did not appear clearly in the title to this bill to what subject these two new sections related, nor to what code they were to be added, and therefore it was considered doubtful whether the title of the bill satisfied the calls of the constitution in that respect. The question was mooted whether this legislation was valid legislation or not; and hence, at the next session of the legislature, it was proposed to amend the title of the act so as to make it conform to the requirements of the constitution. A bill was introduced in the assembly—a verbatim copy of the act of 1880, with the exception of the title—which was amended so as to express the subject of these two new sections and the code to which they were to be annexed. It passed the assembly in that form and was transmitted to the senate. The senate amended section 3664 by adding that portion of the section which, in my brief, is inclosed in brackets. It was then returned to the assembly for their concurrence. Upon a call of the ayes and noes, it received only forty votes in the affirmative, but the speaker declared that it was carried.

Now your honors will see that the first part of the bill of 1881 consists of previous legislation. After the passage of the bill of 1881, the Supreme Court held that there was no defect in the title to the bill of 1880, and therefore that such previous legislation was valid.

The CHIEF JUSTICE—Did the Governor approve the original bill?

Mr. SANDERSON—Yes, sir, he approved the original and also approved this. But if this whole bill be regarded as unconstitutional still the old law has been decided to be constitutional by the Supreme Court, and it is therefore only

the validity of that portion included in brackets which comes to this Court for consideration.

The constitution of the State of California requires that every bill before it shall become a law shall be read three times, shall be passed upon a call of the ayes and noes, and shall not become a law unless it receives a concurrence of a majority of all the members elected to each house. The constitution fixes the number of members of the senate at 40, and the number of members of the assembly at 80. Therefore, in order to pass a bill through the assembly, it is necessary that it should receive the concurrence of 41 members, if 80 members have been elected. The journals and statutes show that the assembly was full; that there were 80 members. The certified copy, which I have introduced, of the written journal shows that the measure received only 40 votes, being one less than a constitutional majority.

The CHIEF JUSTICE—What was the extract which you have put into your original brief, taken from?

Mr. SANDERSON—That was taken from the printed journal.

The CHIEF JUSTICE—And your claim now is that the printed journal differed from the written journal?

Mr. SANDERSON—Yes; the printed journal differed in this: the count, as given in both the printed and written journal, is 39, and is erroneous. A count of the *names* in the printed journal shows 41, which is enough to pass the bill. In the written journal a count of the names shows 40. That is one more than the count, as there stated, shows, but not enough to pass the bill.

Mr. JUSTICE GRAY—Is there any provision in the constitution as to reviewing that matter by the courts, or any decision by the Supreme Court as to how far that is matter of judicial investigation?

Mr. SANDERSON—There has been no decision by the court on that subject. Our constitution is young yet, and

this question has not been before them, or at least has not been decided, so far as I am advised.

Mr. JUSTICE GRAY—And there was no such provision in your former constitution?

Mr. SANDERSON—There was no such provision in the old constitution. The new constitution and the codes provide that journals shall be kept of the proceedings of the legislature, in which shall be entered minutes of transactions as they occur, and that they shall be read each morning by the secretary, and approved and signed by the presiding officers—the Speaker of the Assembly, or the President of the Senate, as the case may be. The Code of Civil Procedure provides that these journals shall be competent evidence to prove the transactions of the legislature. They are evidence of a better character, and of a higher grade than the printed statutes. Therefore, there can be no question but what the constitution and the legislation of the State of California, in relation to this subject, was intended to provide additional safeguards in respect to the passage of bills which had not been provided in the old constitution.

The history of legislative bodies in this country shows that bad measures sometimes become laws through vicious practices and methods. Measures have been allowed to pass by the mere vote of a majority of a quorum. Hence, to obviate this mischief, real or supposed, these provisions of the new constitution were inserted; and the only question is, can the courts go behind the printed statutes and behind the enrolled bills deposited in the office of the Secretary of State for the purpose of ascertaining whether a law has been enacted in the manner and by the vote required by the constitution? There is no question about the fact that a bill which does not receive the constitutional majority cannot become a law. The only question is, may you look into the journals for the purpose of ascertaining what did and what did not become a law?

I will not spend any time on that question. This provision of our constitution was borrowed from the constitution of the State of Illinois. The decisions in that State are numerous and conclusively with us on that subject. They are cited in my brief. There are also two decisions by this Court to the same effect—both, I think, by Mr. Justice Miller—in which he holds substantially: that it is the duty of the courts to find and declare the common law, and that it is no less their duty to find and declare the written or statutory law. Therefore, it is their duty, in investigating that question, to examine all competent testimony—made so by legislation—for the purpose of ascertaining and determining whether a law has passed a legislative body in conformity with constitutional requirements. These cases are also cited in my brief. It has been held everywhere—where similar provisions exist—that this may be done. The authorities cited upon the other side, from the State of California, were rendered under the old constitution, which, as already stated, contained no provisions similar to those which are found in the new constitution. Those authorities are, therefore, not in point. It has been held in States where such constitutional provisions do not exist, that you cannot go behind the enrolled bills; but where these provisions do exist, it has been universally held that you may go behind the enrolled bills and read the journals.

Mr. Justice Bradley—You are aware of the case in New Jersey, I suppose?

Mr. Sanderson—I do not remember the case.

Mr. Justice Bradley—I contended very strenuously, as you do, that the journal should decide the case, but the court of appeals reversed me.

Mr. Sanderson—Are there any such constitutional provision in New Jersey as we have here?

Mr. Justice Bradley—Exactly the same.

Mr. Sanderson—Then I think your honor was right, and the court of appeals was wrong. The question as to the va-

lidity of this part of section 3664 becomes important when you come to consider the question whether the taxing system of the State of California affords the defendant an opportunity to be heard at some stage of the proceedings, because it is in that portion of section 3664 that the proceedings are authorized upon which the other side, in the court below, chiefly relied for the purpose of showing that an opportunity to be heard is given.

It is claimed by the counsel upon the other side that we are not within the guaranties of the Fourteenth Amendment, first, because we are not a "person"; second, because we are not a colored person; and third, because the laws of which we complain are not the laws referred to in that amendment.

The proposition, may it please the Court, that corporations are not included in the word "person" as used in that amendment, is at least a startling one. I have been to the trouble of collecting some facts in relation to the number of corporations in the country and the amount and value of their assests or property. Of course it was a difficult matter to ascertain fully and with entire satisfaction, but from the returns which I was able to reach, I found that the insurance companies of this country number not less than 1,600, and that their aggregate assets are not less than $99,000,000. There are more than 5,000 mining corporations, the value of whose claims and other property it is impossible to state.

There are more than 2,000 national banks, with assets valued at more than $2,000,000,000. There are doubtless a large number of other bank corporations which are not national, and whose assets, or their value, I have no means of ascertaining.

There are in the United States and Territories not less than 1,500 railroad corporations, operating not less than 110,000 miles of railroads, with property and assets of not less than $6,000,000,000.

In addition to these business and trading corporations,

there are scattered throughout the length and breadth of the country, in every town, village, and city, educational, religious, eleemosynary, and sanitary corporations without number, with property of a value which we have no means of knowing. Now, it may be that all these corporations and all these stockholders are without the protection of the Fourteenth Amendment; but, if it be so, there should be some surer foundation for such a conclusion than the emasculating construction of the word "person." If we look to the literature of the law, from time immemorial down to the present time, we find that corporations are spoken of and treated as legal persons. We find that Mr. Blackstone, in his work upon the Rights of Persons, devotes a chapter to corporations, and states that persons are divided into classes—natural and artificial. That natural persons are such as God has made us, and artificial persons are such as the law has made them.

Chancellor Kent does the same. He gives a chapter to corporations in his work on the Rights of Persons.

Nowhere has it ever been asserted that, in the matter of the acquisition, possession, and enjoyment of property, a corporation was not a person within the meaning of any law, notwithstanding the word "corporation" was not employed.

Very little attention has been paid, if the Court please, to the authorities upon this subject. I desire to refer your honors to some of the authorities upon the question, which I think are conclusive. In the time of Henry the Eighth a statute was passed which imposed the burden of building and repairing bridges upon the inhabitants of the town, city, or county in which they were situated. Lord Coke, in commenting on that statute, held that corporations were embraced within it, and that a corporation was, within the purview and meaning of that statute, an inhabitant of the town or

county. Chief Justice Marshall had occasion to refer to this in the first case before this Court involving the question as to what is the legal status of a corporation. Before that, however, in Rex. *vs.* Gardner, Chief Justice Mansfield had decided that a corporation was an "occupier," within the meaning of a statute in regard to certain poor rates which were not assessed against the occupant of the land, because there was no occupant—the land belonging to a corporation. He (Mansfield) held that a corporation was an "occupier" within the meaning of that law. The comment of Coke and the decision of Mansfield came before this Court in the case of the United States *vs.* Deveaux, in 5 Cranch, 61. The question was whether a corporation was a citizen of the United States within the meaning of the constitutional provision which confers jurisdiction upon the Federal courts over controversies between citizens of different States; and it was contended that a corporation could not be regarded in any sense, as a citizen, and that this Court had no jurisdiction over a controversy between a corporation and the citizens of another State. Chief Justice Marshall, however, swept the cobweb from his path and looked behind the shadow at the substance, and there he found natural persons, though a corporation, having the rights of natural persons, which they were endeavoring to assert in their behalf; and he held that these persons were not to be deprived of their rights as citizens of the United States because they had organized themselves into a corporation, and that they were "persons" within the meaning of that clause of the Federal Constitution.

The same question came up again in the reverse form. An attempt was made to bring the Baltimore and Ohio Railroad Company into the circuit court of the United States, and that corporation pleaded to the jurisdiction of the court upon the ground that it was not a person, but was a corporation, and, therefore, was not bound to answer in

the Federal courts. Mr. Justice Grier disposed of that question in a very summary manner. He said:

"A corporation, it is said, is an artificial person, a mere legal entity, invisible and intangible."

Then he goes on and argues the question upon that head, and he winds up with this language:

"But these important faculties, conferred on them by State legislation, for their own convenience, cannot be wielded to deprive others of acknowledged rights. It is not reasonable that those who deal with such persons should be deprived of a valuable privilege by a syllogism, or rather sophism, which deals subtly with words and names, without regard to things or persons they are used to represent."

It is a little singular, if true, that if a corporation, under the laws of England, can be "an inhabitant," "an occupier," can be a person, an individual, and an inhabitant under the laws of some of our own States, and cease to be either when we come to consider the question whether they are "persons" under the Fourteenth Amendment. If they are "persons" under one clause of this Constitution, they must be "persons," also, under other clauses of the Constitution which deal with the same or cognate subjects. Wherever their rights are affected, wherever their property is affected, they are persons, as was held by Mr. Justice Story in the next case to which I shall refer. The case of the United States *vs.* Amedy, 11 Wheaton, 392, was a criminal prosecution under a law which made it a felony for any person to destroy a vessel upon the high seas with the intent to injure the underwriters. The underwriter in that case was a corporation—the Boston Insurance Company. No mention was made in the statute of a corporation. The language was, "shall burn or destroy any ship or vessel, of which he is owner in part or in whole, or in anywise direct or procure the same to be done, with intent or design to preju-

dice any *person* or *persons* that hath underwritten or shall underwrite," &c.

The question was whether this Boston Insurance Company being a corporation was a "person" within the meaning of that statute. Mr. Justice Story in delivering the opinion of the court, among other things, said:

"If there had been any settled course of decision on this subject in criminal cases, we should certainly, in a prosecution of this nature, yield to such a construction of that act, but there is no such course of decisions. The mischief intended to be reached by the statute is the same whether it respects private or corporate persons. That corporations are in law for civil purposes deemed persons, is unquestionable."

Mark the last sentence—"That corporations are in law for civil purposes deemed persons is unquestionable." Take another case that occurred in those times when there was no difficulty in holding that a corporation was a person, when it had occasion to invoke the general principles of law for the purpose of protecting its property. We find in 8 Wheaton another case which arose under the treaty of peace between the United States and Great Britain, the sixth article of which provided: "That there should be no future confiscation made nor any prosecution commenced against any *person* or *persons* for or by reason of the part which *he* or *they* may have taken in the war, and that no person should, on that account, suffer any future loss or damage either in his person, liberty, or property."

The word "person" is used here and such pronouns as are employed in designating natural persons. The case showed that an English corporation before the war had owned land in the State of Vermont, that the State of Vermont had confiscated that land and granted it to the town of New Haven. The English corporation interposed, and sought the protection of this sixth article of the treaty, and its rights were contested upon the ground that it was not a

"person" within the meaning of that treaty; that the treaty did not refer to corporations; that the word "person" was used in connection with pronouns which indicated a natural person, and could have no application, grammatically, to an artificial person. The court rejected that kind of logic and held that a corporation in England was a "person" within the meaning of that treaty, because the corporation was within the reason and philosophy of that portion of the treaty, in that it owned property, and the purpose of the treaty was to protect that property against confiscation; and that it stood, so far as the merits of the question was concerned, in precisely the same relation to the treaty in which a natural person stood, and was therefore entitled to the same consideration and protection.

The authorities upon this subject are so numerous that it seems like a waste of time to refer to them. I defy the gentlemen upon the other side to produce a single case in which it has been held that a corporation, in respect to the possession and enjoyment of its property, whenever it seeks to enforce its rights, or whenever the law seeks to impose upon it any burdens or obligations, is not regarded as a person, whether the word "corporation" occurs in the law or not.

Take the case of The People *vs.* Utica Insurance Company, (15 Johnson, 508.) There the Supreme Court of New York held that a statute restraining *any person* from doing certain acts applied as well to corporations or bodies politic, although not mentioned.

In the case of The Planters' Bank *vs.* Andrews, (8 Porter, 404,) it was held that a corporation was a person within the meaning of the attachment laws of Alabama, although corporations were not named.

In The State *vs.* Nashville University, (4 Humphreys, 166,) it was held that a corporation fell within the meaning of the word "person" in a statute which directed the Land

Office to be opened for the reception of entries by all and every person or persons.

This Court, in the Sinking Fund cases, has made no distinction between persons and corporations, but has placed them in the same category. Mr. Chief Justice Waite, in delivering the opinion of the Court in those cases, says:

"The United States cannot, any more than a State, interfere with private rights except for legitimate governmental purposes. They are not included within the constitutional prohibition, which prevents States from passing laws impairing the obligation of contracts; but, equally with the States, they are prohibited from depriving persons or *corporations* of property without due process of law."

In this clause, as to "due process of law," wherever it occurs, only the word "person" is used; the word "corporation" is not used. Nowhere in the books, nowhere in Magna Charta, nowhere in any State constitution, nowhere in the Constitution of the United States, do you find the word "corporation" in the clause in relation to due process of law. And yet no one has ever pretended until now that it does not protect artificial as well as natural persons. The research of counsel upon the other side has failed to find a case in which any distinction has been made, in this respect, between corporations and natural persons. This failure is significant.

If the Court please, there are some authorities upon this question directly in point, some of which are opposed to the position which we take, and others in favor of it. And first on the list is a case decided in Louisiana, in the circuit court of the United States, by his honor Mr. Justice Woods. That was a case in which the city of New Orleans had, by ordinance, imposed a tax upon foreign insurance companies doing business in that city to double the amount of that which the ordinance imposed upon domestic insurance corporations. A corporation organized under the laws of the State of New York, engaged in the insurance business in

New Orleans, contested the validity of that ordinance under the Fourteenth Amendment, claiming that it was a "person" within the meaning of that amendment; and that was the only question which was considered by the court. Mr. Justice Woods, in delivering the opinion in that case, said, among other things:

"The word 'person' occurs three times in the first section in the following connections: 'All *persons* born or naturalized in the United States;' * * * 'nor shall any State deprive any *person* of life, liberty, or property, &c.;' 'nor' shall any State 'deny to any *person* within its jurisdiction the equal protection of the laws.' The complainants claim that this last clause applies to corporations—artificial persons."

Now attend to the reasoning of the learned judge:

"Only natural persons can be born or naturalized; only natural persons can be deprived of life or liberty; so that it is clear that artificial persons are excluded from the provisions of the first two clauses just quoted. If we adopt the construction claimed by complainants, we must hold that the word 'person,' where it occurs the third time in this section, has a wider and more comprehensive meaning than in the other clauses of the section where it occurs. This would be a construction for which we find no warrant in the rules of interpretation. The plain and evident meaning of the section is that the persons to whom the equal protection of the law is secured, are persons born or naturalized or endowed with life and liberty, and consequently natural and not artificial persons."

Now, with all due respect to the learned judge who delivered the opinion in that case, I think his reasoning is subject to the criticism of Mr. Justice Grier in answering a similar objection in the case of the Baltimore and Ohio Railroad Company, where he said that persons were not to be deprived of their constitutional rights by a syllogism or sophism which deals cunningly with words to the disregard of names and things.

The reasoning of the learned judge is this:

"Persons are born or naturalized; corporations are not born or naturalized. Ergo, corporations are not persons."

Now, this is a syllogism, and syllogistic reasoning is unsafe reasoning when we come to ascertain the meaning of words contained in a statute or constitution. It is as apt to lead to erroneous conclusions as a reference to grammatical rules for the same purpose, or even more so. Now let us test the virtue of this syllogism by applying it to a case with which we are all familiar. According to Moses's account of the matter, Adam and Eve were not born nor naturalized; they were created. Vary the syllogism of the learned judge and apply it to their case. Corporations are not born or naturalized, but created; Adam and Eve were not born or naturalized, but created; therefore Adam and Eve were corporations. Such logic is not safe logic for the purpose of ascertaining the meaning of language as used in a statute or in a constitution. The judge says that corporations are not born. It is true that in a literal technical sense they are not, and yet in a legal and figurative sense they are. Bentham says: "Laws and property are born and must die together. Before there were laws there was no property; take away the laws and property ceases."

Mr. JUSTICE BRADLEY—Do you contend that that first clause of the amendment relates to artificial persons?

Mr. SANDERSON—I am not done with that language yet. The confusion, or whatever it may be called, thrown into this amendment in the first clause, is due to the fact that an amendment was tacked on to it which the committee did not report.

Mr. JUSTICE BRADLEY—I thought you were arguing that, although the word person was used, it might to some extent be applied to corporations.

Mr. SANDERSON—Yes, it may. If I understand your honor, I think that the construction of the word "person"

that the learned judge gives, where it occurs in the last two clauses, claiming that it is the same in meaning as the word "person" found in the first, is all wrong, for the reason that the word "person" used in the first clause is accompanied by the associate words "born or naturalized," which are a limitation upon the word "person" as there used, and confines its meaning to those who are born and who are naturalized, while the word "person" in the last two clauses is not associated with any qualifying words at all, but is used in its generic sense, and embraces all persons of all classes. The word "person" in the last two clauses is broader and more comprehensive than the word "person" contained in the first clause. As suggested by my associate, Mr. Edmunds, an examination of the journal will show that this first clause in relation to citizenship was a political clause, which was not in the amendment at the time it was reported to the House, but was added in the Senate, and has no connection with, and was not intended to have, any control over the subsequent parts.

Mr. JUSTICE BRADLEY—I understand there was a great controversy about citizenship; whether they belonged to the State or the United States.

Mr. SANDERSON—Yes, sir, that question was considered by Mr. Justice Miller in the Slaughter-house Cases.

Mr. JUSTICE BRADLEY—And the amendment was intended to settle that question?

Mr. EDMUNDS—Yes, but it was a political consideration that the Senate suggested to the House after the main body of private rights had been disposed of in the House of Representatives.

Mr. SANDERSON—To continue my remarks upon the Louisiana case. The reasoning in that case interpolates words—adds words to the language of the Fourteenth Amendment which were not employed by the statesmen who framed it. According to the reasoning in that case the first

section—if the meaning attributed to it be fully expressed in words—would read thus:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside; * * * nor shall any State deprive any person (born or naturalized in the United States) of life, liberty, or property, without due process of law; nor deny to any person (born or naturalized in the United States) within its jurisdiction the equal protection of the laws."

To thus interpolate words is not sanctioned by any rule of construction. To thus interpolate words is to make laws and not to construe them. No court can lawfully do this. *Jus diseere non jus dare* is the measure of judicial power. You may declare the law but you cannot make it. Had Congress intended the meaning which the learned judge has given to the word "person" they would have prefixed to it the word "such," so that these clauses would have read as follows:

"Nor shall any State deprive any (such) person, &c.; nor deny to any (such) person, &c."

And the fact that no such qualifying word or words were used conclusively shows that no such limitation upon the meaning of the word "person" was intended.

There are two other cases in which the same conclusion was reached. One was decided by the supreme court of California, and the other by a judge of a circuit court of the State of Illinois. The former gave no reasons for the faith that was in them, but blindly followed the Louisiana case. The Illinois judge adopted the reasoning, substantially, of Mr. Justice Woods.

In opposition to the doctrine announced in these cases there have been several decisions by the Federal judges on the Pacific coast, and by United States circuit Judge Drummond, of Illinois, in which it has been held that corpora-

tions are as much entitled to protection under the Fourteenth Amendment as natural persons. These decisions are cited in my brief. I have no time for comment. There is also a case by the supreme court of Illinois, in which it is held that no distinction can be made between corporations and natural persons in the presence of constitutional guaranties. This case is not cited in my brief. It is reported in 76 Illinois Reports, at page 447. I trust your honors will read it.

These decisions we must presume were perfectly familiar to the statesmen who framed the Fourteenth Amendment. They were familiar with the fact that the word person included corporations, and if any layman in either House of Congress had moved to amend by adding the word "corporation" in addition to the word "person," every lawyer in the House would have told him that it was entirely unnecessary. If he had moved to amend by adding "any other association, firm, co-partnership, or joint stock company," they would have told him that the word person in connection with civil rights always includes corporations and other legal associations. I think you can find no case in the books to the contrary. Suppose that certain negroes down in South Carolina, having acquired means sufficient, should conclude to build a theatre or some other place of amusement and should build it. We all agree, I think, that the Fourteenth Amendment protects the negro against State action if it does not the white man. Now suppose that these persons after having built their theater should come to the conclusion that it would be advantageous for them to take on the form of a corporation for carrying on their business, and should organize themselves into a corporation so that you would have in fact a colored corporation instead of colored natural persons. Would such a corporation be within the protection of the Fourteenth Amendment? Could the State of South Carolina despoil them of their theatre upon the ground that they

were a corporation, while they could not be despoiled of their theatre so long as they remained in their capacities as natural persons? It cannot be that a great constitutional provision of this character can be rendered inoperative simply by a change in the legal attitude which the parties may assume. If the constitution would protect such property from State action, while its owners were individuals or natural persons, it must necessarily do the same thing when they take on the form of a corporation, or else this constitional amendment fails to accomplish in part one of the great purposes which all concede was intended to be subserved by its adoption—namely, protection for the negro race.

A short time before this case came up in California an item appeared in the newspapers which illustrates the absurdity of holding that a corporation is not included within the word "person" as used in this amendment. A certain firm doing a large and extensive business, which they had been conducting for several years, concluded that it would be more convenient to organize themselves into a corporation to carry on precisely the same kind of business. They formed a corporation, and they published in the newspapers the fact that they had formed a corporation, and that the corporation would continue the business as before, and that the interest of each member would be the same in the corporation as it had been in the firm. Now, take that case. While they remained in their capacities as natural persons, no one pretends that they were not within the protection of the Fourteenth Amendment, if that amendment applies at all to white people. But the moment they laid aside their natural capacity and assumed that of a corporation, according to the logic of our friends upon the other side, they forfeited all their rights under the Fourteenth Amendment. Thereafter there was no restraint upon the State in respect to them, though prior to that time there had been. By this simple transmutation of private persons into a corporation,

the meaning, force, and effect of this constitutional provision, if counsel upon the other side be correct, was entirely changed and reversed.

Another consideration, may it please the Court. Corporations are composed of natural persons. They pay in their money; the assets of the corporation are furnished by themselves. The whole property is contributed by themselves. The corporation is the mere representative or agent of its stockholders. During the life of the corporation its stockholders are entitled to share in its earnings, if there be any, in the way of dividends. Upon the dissolution of the corporation they are entitled to share in the surplus fund, after the payment of creditors, if there be any. Now, this interest which the stockholder has in the property, and assets of the corporation, is property. It has a commercial, exchangeable value. It is transferred from person to person by the transfer of certificates representing shares. It is property. If a man dies it descends to his personal representative for the purpose of administration, and if there be any left after administration it goes to his heirs; and it is in view of these legal conditions that the courts hold that stockholders' bills may be entertained for the purpose of protecting the stockholder against the mal-administration of the directors. Is it to be presumed that property of this character was not intended to be protected by the clause in relation to due process of law as much as any other property belonging to a natural person? I, as a natural person, own certain species of property. The Federal Constitution protects that from the unjust legislation of the State. I also own an undivided interest in the assets of a corporation, which is also property. That property, the learned gentleman upon the other side informs us, the Fourteenth Amendment will not protect against confiscation on the part of the State. Can it be possible that the Fourteenth Amendment can be so construed as to lead to these contradictory and absurd results? Can it be that it was not intended to protect all

kinds and descriptions of property belonging to natural persons, whether it be that which is under his own absolute control or that to which the title is invested in some third party as trustee to hold for his benefit? Can a mere difference in circumstances and condition between the first and second kinds of property referred to create a difference in rule in the constitutional law of the country? I most respectfully submit that it does not; and therefore, for the purpose of carrying out the command and behest of the Federal Constitution, you are required to do what? The command is that no State shall deny to any person the equal protection of the laws; no State shall deprive any person of life, liberty, or property, except by due process of law—all property—any property which he holds in his own right, in his own name, or in the name of another; the word is "property," the broad generic term which covers and includes everthing which man may acquire, possess, and enjoy—all property. The language is, no State shall deprive any person of life, liberty, or property—that is to say, any property—except by due process of law.

Now, if that is what it means, then, in order to protect the interests of the stockholder in the assets of the corporation, you must protect the corporation. To accomplish the principal purpose you must subserve the minor. You cannot, because a man has deposited his property in the hands of another, hold it subject to confiscation by a State in the presence of such a provision of the Federal Constitution.

It is next said, may it please your honors, that this provision of the Federal Constitution does not apply to white men; that it was intended to apply only to the negro race. It is very clear, if we look back over the history of the past twenty years, that this country has done a great deal for the negro race. It has stricken the fetters from their ankles and their hands, and it has endowed them with a second manhood. It has made them free men; it has endowed them

with the rights of citizenship, political and civil, and it has placed them on a par and equality with the white man. But that is none too much; we do not complain of that. We only say that something should now be done for the poor white man. We ask that he may be lifted up and put upon a level with the negro. We ask that this Fourteenth Amendment be so construed as to concede to the white man equal rights under the Constitution of the United States with the black man. Our claim is for universal equality before the law. We claim that we should have no privileged classes; that we should all stand, as regards the law, upon the same broad and level platform. And, yet, my friends upon the other side, by their construction of this amendment, would create a privileged class. They have demonstrated, if they have demonstrated anything, that the negro race of America is a privileged class; that it stands higher upon the plane of legal rights than the white man; that whenever his rights are invaded he finds a shield and a protection in the Fourteenth Amendment to the Federal Constitution; but whenever a white man's rights are invaded, whenever he is outraged by unjust State legislation, we are told by the eloquent gentleman on the other side that there is no shield for him to be found in the Fourteenth Amendment; that the white man is without protection in cases where the black man is protected; in other words, that the white man is not the equal of the black man. The construction which they put on these clauses of the Fourteenth Amendment leads us inevitably to that conclusion.

I have been to the trouble of gathering a few statistics upon this subject, for the purpose of illustrating what the consequence of this doctrine would be should it receive the sanction of this Court. On page 52 of my brief you will find some information which I have gathered from the census returns of 1870, and also from the census returns of 1880. In 1870 the negro population in Louisiana was

364,210 and the white population 362,065; the excess of blacks over whites was over 2,000. In 1880 the black population of the same State was 483,794 and the white population 455,007; an excess of blacks over whites of 28,787. In Mississippi the black population in 1870 was 444,201, while the white population was only 382,896, making an excess of blacks over whites of 61,305. In the same State in 1880 the black population was 650,337 and the white population 479,371; an excess of blacks over whites of 170,966. In the State of South Carolina the black population in 1870 numbered 415,814, while the white population in the same State was only 289,667; an excess of blacks of 126,147. In the same State in 1880 the black population numbered 604,275, while the white population numbered only 391,224; an excess of blacks of 213,051.

I refer, if the Court please, to these statistics for the purpose of giving point to my illustration which I propose to present for the purpose of showing that this constitutional provision was not intended to be limited in its scope and provision to the negro race alone.

Mr. JUSTICE MILLER—As we decided in the Slaughter House cases, (although the argument was the other way,) we say: "And so, if other rights are assailed by the States which properly and necessarily fall within the protection of these articles, that protection will apply, though the party interested may not be of African descent."

Mr. SANDERSON—I am glad to know that, your honor.

Mr. JUSTICE MILLER—I do not know that anybody in this Court—I have never heard it said in this Court or by any judge of it—that these articles were supposed to be limited to the negro race.

Mr. SANDERSON—But there is a notion out among the people, and our friends on the other side have cited several cases for the purpose of showing that it was the intention of this Court to give to this provision of the Constitution as restricted and limited application as possible.

Mr. Justice Miller—The purport of the general discussion in the Slaughter-House cases on this subject was nothing more than the common declaration that when you come to construe any act of Congress, any statute, any constitution, any legislative decree, you must consider the thing, the evil which was to be remedied, in order to understand fairly what the purpose of the remedial act was.

Mr. Sanderson—We agree perfectly, and I am not going to urge that there is anything contained in the Slaughter-House cases which admits of a different construction than your honor now puts upon it. But I must confess that there has been an impression that the Slaughter-House cases narrowed the provisions of the first clause, and also the provisions of the two latter clauses—their scope, as one would naturally understand them from reading their words. But, as I was about to show when your honor interrupted me, the Slaughter-House cases do not justify such an impression. Your honor says, at page 72, "We do not say that no one else but the negro can share in this protection. * * * And so, if other rights are assailed by the States, which properly and necessarily fall within the protection of these articles, that protection will apply, though the party interested may not be of African descent."

I am very glad to have any doubt which has existed in the minds of the profession in regard to the purport and meaning of that decision cleared up by an authoritative opinion given in this public manner. I understand, then, that we may consider, for the purposes of this case, so far as your honor is concerned, that the color line has disappeared from American jurisprudence, that there are not two constitutions in this country—one for the black man and one for the white man—and that the white man is at last on an equality with the negro. But, nevertheless, in view of the fact that there are some judges on the bench who were not here at the time the Slaughter-House cases were considered, and who may, so far as I know, entertain

the idea that there are some clauses of this amendment which confine its operation to the negro race, I do not propose to discontinue my argument on this point. Let us reverse the conditions presented by Mr. Justice Miller in the Slaughter-House cases, in reference to the condition of the negroes at the South, and the character of the legislation which had been enacted against them for the purpose of testing whether this constitutional restriction was intended to be confined exclusively to them or not. I say, suppose in those three States, Mississippi, Louisiana, and South Carolina, where the negro population preponderated over the white, the negroes had possessed the requisite intelligence and nerve to organize themselves into a political party and had elected their own men to office; had filled the halls of legislation and the halls of justice with persons of their own race; suppose they had enacted laws prohibiting white persons from residing in the towns, except in the capacity of menial servants, requiring them to reside upon the soil and till it, but denying to them the right to purchase it, or own it; had denied to them the right to testify in cases in courts of justice where negroes were a party; had by the failure to pass sufficient or to provide for the efficient administration of the laws allowed the beating down of white men by negroes, as is represented to have been done to negroes by white men in the Slaughter-House cases. Now, suppose these poor whites had come to this Court, claiming protection against such legislation; suppose they had come to this Court and invoked for their protection against such outrages the provisions of the Fourteenth Amendment to the Federal Constitution. Would this Court have closed its doors in their faces; would it have said to them "the Fourteenth Amendment was intended to prohibit white men from enacting such legislation against black men, but it was not intended to prohibit black men from enacting such legislation against white men?" I do not think the Court would

have so answered; I am now more satisfied than ever that it would not. I am glad to know that we have not, in this country, two constitutions, one for the black man and one for the white man. I am glad to know, in advance, that the color line is about to disappear from legislative and judicial history in this country, and that all of us white, as well as black, are to stand side by side upon the broad platform of universal equality in the presence of the law of the land.

But it is also said that we are not entitled to the benefits of this provision of the Fourteenth Amendment because the laws of which we complain are not within the operation of the Fourteenth Amendment; are not the laws to which the Fourteenth Amendment refers. In other words it was not intended by the Fourteenth Amendment to vest the judiciary of the United States with the power of reviewing the revenue laws of the States to ascertain their purpose or to ascertain whether they were consistent with the Constitution of the United States or not. Where is there a warrant or authority for such an assertion? You do not find it in the language, it is not there; "nor shall any State deny to any person equal protection"—of what? "of the laws" against crime; with the respect to the enjoyment of property; in relation to proceedings in courts of justice; laws relating to conveyancing and the thousand and one subjects of which laws treat? Not at all. "No State shall deny to any person the equal protection of the laws"—all laws—any law by which a State may deny to any person equal protection with some other person. Now the subject-matter of the law is a matter of the utmost indifference. It is not that against which the Constitution of the United States is to provide protection. No matter what the subject may be it is as to the law itself—no matter what it relates to. That law must operate equally. Each person must find who comes in contact with it, equal protection at its hands no matter in what department of the law it may be found.

The Chief Justice—You have a half hour left to complete your argument.

Mr. Sanderson—Then I will submit only one or two more suggestions for the purpose of showing that tax laws are within the operation of that amendment. We have already agreed that the negro is within the meaning of that amendment, and now we have all agreed that the white man is within the meaning of that amendment. Therefore we have made some progress. Therefore I will suppose, if there should be anybody who still adheres to the color line theory, that South Carolina should pass laws imposing a capitation tax upon persons within its jurisdiction, say a capitation tax of $5 upon negroes and $2.50 upon white men, would my friends upon the other side, who say that the negro is shielded and protected by the Fourteenth Amendment, say that law is not within it because it was a law made in the exercise of the taxing power? I think not. Suppose they should pass a law by which the property of white men, when sold for taxes, should be sold subject to redemption at any time within one year. Suppose that they should provide that in the case of black men the property so sold should be sold absolutely, and not be subject to redemption at all. Would that be a case within the Fourteenth Amendment? Yet that would be a law in relation to taxation. Why, it is hardly necessary, may it please the Court, to illustrate this matter further. Tax laws are the very laws of all others which are within the operation of the Fourteenth Amendment. It is by the exercise of the taxing power that oppression and tyranny has been visited upon peoples and countries from the earliest ages down to the present time. It is the one element of despotism and tyranny yet left in every government of republican forms.

Mr. Justice Bradley—In former times, and I think at present in some States, it was customary to impose special taxes on objects. On a mill it was ten dollars on every mill

in the State, and on every carding machine, and so on. Various articles were specially taxed. In New Jersey they were called specialties, and like all other property so assessed, valued at a valuation and taxed *pro rata*. And at present I presume that railroad property and railroads are in some States taxed specially so much, perhaps, on their income as a commutation of all other taxation. Now, do you contend—do your principles require you to contend—that a State has lost its power of thus taxing different species of property in special lines?

Mr. SANDERSON—Not at all.

Mr. JUSTICE BRADLEY—That has not been particularly dwelt upon, and I did not know but what you did.

Mr. SANDERSON—Not at all. We admit to the fullest legal extent the power of a State to classify property for the purpose of taxation. We have never contended for anything else, and if there is anything in this case which puts us in that attitude before the Court, it has come from counsel on the other side in misapprehending our views. We do not deny the power of the State to classify property for the purpose of taxation, but we do deny that the State of California has exercised that power, except to a very limited extent, by exempting growing crops and exempting credits equal to the amount of debts. It has made no classification whatever of the property, but it has declared, on the contrary, that all property shall be taxed according to its value.

Mr. JUSTICE BRADLEY—That is their constitution, but I am looking at the Fourteenth Amendment.

Mr. SANDERSON—The Fourteenth Amendment simply requires equality; that the law shall bear equally upon all persons and things upon which it bears at all; that is our position. You may cast the burdens of taxation upon one species of property to the exclusion of another; such a law affords equal protection to all upon whom it operates. To illustrate: Suppose the State should levy a specific tax of twenty-five cents upon the cows of A and fifty cents upon

the cows of B. The power of selecting a cow for the purpose of taxation, and levying a tax upon it, we admit. What we deny is that you can levy a tax of twenty-five cents on the cows of A and at the same time levy a tax of fifty cents on the cows of B. And the Fourteenth Amendment, in declaring that no State shall deny to any person the equal protection of the laws, means that. It means that wherever the law touches different individuals, wherever such individuals stand in the same relation to the law, where the conditions and the circumstances are the same, the rule of law shall also be the same. In the example which your honor just cited of taxation in New Jersey, you do not tax the mill of A so much and the mill of B so much more, and so on.

Mr. JUSTICE BRADLEY—No; but it might be taxed higher than other property of the same character.

Mr. SANDERSON—We hold that when an *ad valorem* system of taxation is adopted, or a specific system, (you can tax by either process,) you cannot impose a greater rate upon the property of A than upon the property of B of the same kind: nor can you adopt one mode of valuation in the one case not resorted to in the other, if the result be the laying of a greater burden upon one person than another in respect to the same kind of property. Such legislation, we say, is prohibited by the Fourteenth Amendment.

Mr. JUSTICE BRADLEY—In other words when the tax becomes personal in an invidious sense.

Mr. SANDERSON—Yes, it is then a discrimination not between different kinds of property but between different owners of the same kind of property. To illustrate: this case shows that the defendant in error is the owner of about eight million acres of land granted by the United States to enable it to construct its road. It was granted each alternate section to the number of ten on each side of the road per mile. Now the even sections are owned by natural persons. We will assume that a natural person has put a mortgage on

his to one-half its value. We will assume that the mortgage of the railroad company is also one-half of its value. Now these lands are of identical quality and quantity and value. They are the same in all respects; you cannot distinguish one from the other. I will assume for the purposes of my illustration that it is the same, and that you cannot distinguish one from the other on the score of value. Now if in ascertaining the value of his land the natural person is allowed to deduct the face value of the mortgage upon it and to be assessed for the remainder only, and the defendant is denied a deduction and made to pay taxes upon the full value of its land without regard to the mortgage; then, I say it is not a discrimination between different kinds of property; the property is identically the same—I say it is a discrimination between different owners of the same kind of property.

Mr. Justice Harlan—You therefore deny the right of the State to tax the land of the individual citizen without allowing him to deduct the mortgage, and at the same time allow the railroad owning similar land to deduct the mortgage.

Mr. Sanderson—Of course I do; that is simply reversing the question, if I understand it. It results not in a discrimination between different kinds of property for the purpose of taxation, but in a discrimination between different owners of the same kind of property. There has been some confusion of ideas brought into this case, arising from the fact that counsel on the other side are all the time talking about railroad property, and speaking of it as property mentioned in the fourth section of the 13th article of the constitution of the State. Now, railroad property is not referred to at all except when you come to the question of assessment. It says, "except as to property," not as to railroads, but as to the property of railroad and other *quasi* public corporations. It is not an exception as to railroads only—they alone are not taken out of the general rule and set apart by themselves—

but property of every kind and description. It is the property of railroad and other *quasi* public corporations that is taken out of the operation of the general rule. Now, what are *quasi* public corporations? There are other than railroad corporations which come within the operations of this rule—toll-bridge companies, ferry companies, steamship and hotel companies, corporations engaged in any kind of business which, under the Granger cases, is affected by a public use—elevator business, for instance. Take an elevator erected in Chicago——

Mr. JUSTICE HARLAN—How about telegraph companies in California; are they not public corporations?

Mr. SANDERSON—They are.

Mr. JUSTICE BRADLEY—I regret to interrupt you, but it might throw light on a question which has arisen in my mind. What objection have you to these corporations being taxed the full value of the property, with the permission or privilege of charging the encumbrance or mortgage? Railroad companies and other large corporations, if they should put a mortgage on their property and issue innumerable bonds, it would be hard to find those bonds to tax; whereas, in case of private individuals and their bonds and mortgages, it is easy to tax property by itself and the bond and mortgage by itself. The bond and mortgage is recorded, but railroad bonds are scattered all over the world. Now, as a mode of getting at the tax on the whole property, what is the serious objection to charging it all to the railroad, and permitting them to charge against the bondholders, the amount which would be due from them on the tax; or is not that done in this law or in this constitution?

Mr. SANDERSON—No, sir; and that is just what is the matter. If we were allowed, I do not know but what we might be willing to serve as a tax-gatherer, although I do not know that the Government has any power to impose upon us that duty. But the difficulty here is that this

mortgage on the property represents an undivided interest in it for the purposes of taxation.

Mr. Justice Bradley—That is in private property.

Mr. Sanderson—But of course we claim that the rule should be extended to *quasi* public property. Each has an interest in the land. The mortgagor and the mortgagee are tenants in common.

Mr. Justice Bradley—I understand that.

Mr. Sanderson—Now, in the case of natural persons, each interest is taxed to each tenant, but in the case of *quasi* public corporations there is no such division or deduction made. There is no pretense of assessing the mortgage against the mortgagee as in the other case. If there were there might be no objection to the companies collecting the tax and paying it over, and therefore no valid objection to the law.

Mr. Justice Bradley—The constitution is put in the brief in piecemeals—in fragments—and I have not seen the whole of it. Is there no provision allowing the railroad company or other *quasi* public corporation to charge against the encumbrancer the tax?

Mr. Sanderson—No, sir; none whatever. There is in the case of natural persons. In the case of a railroad company or other *quasi* public corporation no such question could arise, for the obvious reason that the mortgage is not taken into account at all; it is ignored as a false quantity in measuring the liability of a railroad or other *quasi* public company under the taxing system.

It has been suggested—and I call the attention of the Court to it in my brief—that we have, in support of our view in relation to this question of whether tax laws are within the operation of the Fourteenth Amendment, a legislative construction on the part of Congress in the re-enactment of the Civil Rights bill after the Fourteenth Amendment was adopted. In this re-enactment Congress inserted "taxes," "licenses," "burthens," and "exactions" of every

kind and description, although they were not in the Civil Rights bill originally, and probably were omitted for the very reason for which counsel contend upon the other side, that State tax laws were not then within the operation of the Federal Constitution. Had the bill originally contained this provision as to taxes, &c., it doubtless would have been unconstitutional, but upon the adoption of the Fourteenth Amendment such a provision became constitutional in the judgment of Congress, and that body in re-enacting the bill industriously inserted this provision in relation to taxes, licenses, burthens, and penalties of every kind, and thus gave to the Fourteenth Amendment a legislative construction.

The admonition of the Chief Justice that the time allowed me is about to expire, compels me to pass, in silence, several questions involved in this case—as to whether the constitution and laws of California discriminate between *quasi* public corporations on the one hand, and natural persons and corporations not *quasi* public on the other hand; as to whether the system of taxation in California can be considered as a classification of property for the purpose of taxation; as to whether such system can be sustained as valid on the ground that in adopting it the State was in the exercise of the power to alter and amend general laws in relation to corporations; as to whether the guaranty of due process requires notice and an opportunity to be heard in the exercise of the taxing power of the States, and as to what is meant by the equal protection of the laws guaranteed to every person by the Fourteenth Amendment. I regret that I am denied, by the lapse of time, an opportunity to discuss these most important questions. Fortunately my associates have left nothing to be said upon these points. They are pretty fully discussed in my brief, which I hope your honors will read.

In closing what little I have been allowed to say as to the construction of the Fourteenth Amendment, I take the lib-

erty of adding that I have always believed and, in opposition to the able arguments of my learned friends upon the other side, I still believe, that by these two clauses of the Fourteenth Amendment the principles of *Magna Charta* and of the declaration of American Independence have been incorporated into our National Constitution, as a just and wholesome restriction upon the power of the States. I believe that the clause in relation to due process means the same as it means in *Magna Charta*—the same as it means in every State constitution—the same as it means in the Fifth Amendment to the Federal Constitution, except that there it is a restriction upon national power, while in the Fourteenth Amendment it is a restriction upon State power. I believe that the clause in relation to equal protection means the same thing as the plain and simple yet sublime words found in our Declaration of Independence: "All men are created equal." Not equal in physical or mental power; not equal in fortune or social position; but equal before the law. I do not believe that the two clauses in relation to due process, found—one in the Fifth and the other in the Fourteenth Amendment of the Federal Constitution, mean the one more or less than the other. I do not believe that, like the witches in Macbeth, they

> "Palter with us in a double sense—
> Keep the word of promise to the ear
> And brake it to the hope."

As they speak the same language, so, in my belief, they declare the same intent. I believe that these two clauses were the one stone lacking to complete the edifice. I believe them to be the crowning glory of the Federal Constitution, and I regret that there is any disposition in any quarter to dim their lustre or fritter away their substance by a narrow and emasculating construction of their language.

I pass to the last question presented by the record, and

that is as to whether the franchise of the defendant is taxable under State laws or not, or whether it is protected from State taxation by the supremacy clause of the Constitution of the United States. That is the provision of the Constitution to which we appeal for the purpose of showing that this franchise—the right to be, the right to exist, the right to maintain and operate this road—is beyond the reach of the taxing power of the State of California.

The CHIEF JUSTICE—The State of California incorporated the Southern Pacific Railroad Company, did it not?

Mr. SANDERSON—Yes, sir.

The CHIEF JUSTICE—And by act of Congress there has been some additional franchises or grants?

Mr. SANDERSON—Yes, sir.

The CHIEF JUSTICE—It is in the same condition that the Central Pacific was?

Mr. SANDERSON—Yes, sir.

This corporation was originally organized under the laws of the State of California for the purpose of building a road from the Bay of San Francisco down the coast of California to San Diego, and thence eastward to connect with a road to be constructed from the Valley of the Mississippi to the Pacific ocean. At what particular point the road would cross the eastern boundary of the State could only be conjectured. Hence the company fixed no point for the southeastern terminus of its road. Congress passed an act authorizing the company to connect with the Atlantic and Pacific Railroad at a point on the eastern boundary of the State of California where that road should cross, and thence build a road by the most eligible route to the City of San Francisco.

I will state here, because I do not want to be misunderstood, that I do not claim that it is necessary to establish the proposition that we are a national corporation in order to secure the exemption which we claim. While I propose to establish that fact if I can, yet it is not indispensable, because the

franchise of a State corporation becomes exempt from State taxation, as we claim, whenever such corporation has been selected by the United States to serve the Government in the capacity of an agent or means of carrying into execution certain governmental powers of Congress.

But it makes a clearer cut case, if I establish the proposition that this corporation is not a mere local State corporation endowed with a life for fifty years only, but a national corporation, selected by the Government of the United States, adopted by the Government of the United States, for the purpose of constructing, maintaining, and operating a post and military road for all time, and to that end endowed with immortality.

It is not necessary in creating a corporation, that there should be any express grant of corporate powers. If the words "erect," "establish," "create," &c., are not employed it makes no difference. It requires no magic words, no set or formal phrase to erect a body men into a corporation. It may be done by implication. It may be done as summarialy as in the days of chivalry the honor of knighthood was conferred—"Kneel down and rise up Sir Knight." All that it is necessary for the legislature to do is to confer some right or some grant on a body of men by a collective name which cannot be enjoyed except by the exercise of corporate faculties, and that alone, by implication, endows the association with corporate powers, endows them with immortality, and with all the other powers which may be necessary to carry out the purpose of the grant. If the king makes a grant of land to the "Men of Islington" without words of succession they become a corporation, for otherwise the grant would fail.

I do not contend that in thus adopting a State corporation it is necessary to sever its connection with the State. It is not necessary to sever it. A corporation may have a dual existence; it may be Janus-faced—one face turned toward the State, and the other toward the United States. We are

citizens of the United States and of the State in which we reside. So corporations may be corporations of the United States as well as corporations of the State in which they reside, or have their principal place of business. What has this Court said in support of the proposition that one sovereign may adopt a corporation created by another sovereign? In 2 Black will be found a case where a railroad corporation created under the laws of Indiana proposed to extend its road to Cincinnati, Ohio, and to that end applied to the Legislature of Ohio for a grant of corporate powers and privileges to enable it to cross the border line, and penetrate Ohio to Cincinnati. The Legislature of Ohio, intending to grant them all the powers that were requisite in order to accomplish that purpose, undertook to pass, and did pass, substantially, the same charter—the same law under which they were incorporated in Indiana. Very well, what was the result of that? Was this corporation thereafter a mere corporation of the State of Indiana, or did it, without losing its character as a corporation of the State of Indiana, become also a corporation of the State of Ohio, and entitled to enjoy the franchises and powers conferred upon it by that State? The question came up before this Court in 2 Black. The corporation brought a suit in its capacity as an Ohio corporation against certain citizens of the State of Indiana. They interposed a plea to the jurisdiction of the court claiming that the corporation was a citizen of the State of Indiana, and, therefore, could not sue the citizen of Indiana in a Federal court. Answering to the plea, this Court said in substance:

This body of men have a dual or double existence, and they are a corporation within the State of Indiana, under the laws of Indiana. They are also a corporation of the State of Ohio, under the laws of the State of Ohio. But they cannot maintain their action, because it is a joint action on the part of both corporations, and, therefore, they must seek their remedy in State and not in Federal courts.

Now, if the State of Ohio could thus adopt a corporation of the State of Indiana, why may not the United States adopt a corporation of any State of the Union and put it to its uses in carrying into execution laws constitutionally enacted by Congress for the purpose of carrying into effect the powers of the Federal Government? Why not? Is there any impediment in the way? That is precisely what was done in the Central Pacific case. Now, what was the condition of that case? The Government proposed to establish a post and military road by which the Mississippi Valley should be connected with the Pacific Ocean. It was in time of war. Armies were marching through the Republic. Blows were being struck at the vitals of the nation; and it was important that this road should be constructed "on time," to use a railroad phrase. What did they do? They created a corporation at this end of the line—none being here offering their services—to construct and operate and maintain the road. Over at the other end was a little State corporation organized originally for the purpose of building a railroad from Sacramento to the eastern boundary of the State of California, a distance of about one hundred miles. It was an insignificant corporation, but it was headed by men of energy, zeal, and determination. Instead of creating a corporation at that end of the road for the purpose of building it, what did Congress do? They found a corporation, organized under the laws of California, standing ready and willing to be selected by the Government of the United States as its agent, and they selected it. In creating the Union Pacific they endowed it with immortality. They annexed certain conditions to the construction and management of the road; required it to be built of a certain gauge, and to be operated as one continuous line. They authorized it and other companies to consolidate. They conferred upon it divers powers, such as are usually conferred upon corporations; and finally provided that all the grants to the Union Pacific should inure

to the benefit of the Central Pacific upon their complying with the conditions of the act. The Central Pacific was authorized to do what? To build a road from Sacramento to the summit of the Sierra Nevada mountains? No. But to build a road from San Francisco east until it met the Union Pacific buiding west. In other words, it was authorized to cross the boundary line between the State of California and the Territory of Nevada; authorized to pass through Nevada into Utah, there to connect with the Union Pacific at Ogden. It was authorized to build a road in its own State where it had no authority to build under its charter. It was authorized to build a road in the Territory of the United States where it had no authority to build a road under its charter. It was required to build and maintain a road for all time, although it can exist only fifty years under the laws of California. It was authorized to build and maintain a link in a post and military road, created and established by the Congress of the United States in the exercise of the powers of the Government of the Uuited States over the subjects of commerce and war. Now, will the gentlemen answer me who it is, and who it was, that granted the franchise which the Central Pacific Railroad Company is exercising? If they exist as a corporation in Nevada to-day, they do not so exist by virtue of their organization under the laws of the State of California. If they exist as a corporation in Utah, it is not by virtue of the laws of California. They exist there if at all, by virtue of their charter from Congress in 1862; that is their only charter; their only authority; the only thing to which they can appeal for protection in case their rights be invaded.

Now, suppose the State of Nevada should come to the conclusion that it would be better for that State to put a stop to the Central Pacific Railroad. Suppose its legislature should instruct its attorney general to institute proceedings by *quo warranto* for the purpose of testing the right of the Central Pacific Railroad Company to use the franchise it is

using in the State of Nevada. Suppose the State courts of Nevada should come to the conclusion that the corporation is a mere State corporation; that it has no powers or existence outside of the State of California; should come to the conclusion that it is without a charter or authority to exist or exercise franchises in that State, and should declare it to be an usurper, and should enjoin it forever from exercising any of the powers conferred upon it by the act of Congress. Suppose that to be done tomorrow; what would the Central Pacific Railroad Company say in reply? Would they appeal to their California charter? No! No! California never has—never can—confer upon them the power to exist and operate a road in Nevada or Utah. To what, then, would they appeal? To the act of Congress of 1862, and to that alone. That is their shield and the only shield that can afford them any protection against such action. Could they not continue to operate the road, notwithstanding such a judgment by a court of the State of Nevada? Is this Court willing to admit that the State of Nevada has the power, under the conditions stated, to destroy—not retard, embarrass, delay, burden—but actually *destroy* and prevent the operation of the laws by which Congress has sought to carry into execution some of the well-understood and acknowledged powers of the Federal Government. I imagine, if such a case should ever occur, it would result in establishing the proposition that the Government of the United States may select State corporations as well as natural persons, and constitute them their agents for the purpose of carrying into effect the lawful orders of the Government of the United States in the exercise of constitutional powers.

The CHIEF JUSTICE—Your time has expired.

Mr. SANDERSON.—I want about five minutes more to call attention to what this Court has said upon this question away back in the time of the United States Bank, an institution created on the same principle that the Union Pacific

Railroad was created, except for banking purposes. Of the $37,000,000 capital of that bank, only $7,000,000 was contributed by the United States. That bank was created for the purpose of carrying into execution certain measures in relation to finance; to assist in transmitting money north and south, east and west. It was a mere financial agent, insignificant in comparison with the objects sought by the construction of railroads across this continent, by which a pathway over hill, mountain and dale is made for the commerce of the world. Now, what did Maryland do in relation to that bank? It imposed a trifling tax on paper which that bank required for the purpose of printing its bills. Chief Justice Marshall said—not because it prevented the bank from carrying out the purpose of Congress, but simply because it tended to that end—the existence of such a power in the States would be destruction to the supremacy of the United States. That the power to tax the means employed by which to carry into execution the constitutional powers of the National Government, was a power by which such means could be destroyed, and therefore such a power could not be recognized as existing in the States.

What did Ohio do? It levied a license tax upon the operation of the branch banks in that State—precisely what is being done by the city of Los Angeles in regard to this railroad, making it pay a license tax on every locomotive and car passing through that city. It was a tax on the operations or business of the bank. What said this Court? It said, in effect: If you can tax it one per cent. you can tax it two hundred per cent., and thus make it impossible for it to carry on the business for which it was created. Therefore, we cannot recognize the existence of such a power; it is suicidal, it is fatal to the supremacy of the Government of the United States, and it cannot be tolerated or recognized at all; not because Congress has said so, but because the people of the United States have said the Constitution

of the United States shall be the supreme law of the land, any law or ordinance of any State to the contrary notwithstanding—the supreme law, in the presence of which all the States must stand uncovered.

In regard to the railroad cases, in which you have decided that the tangible, visible property of a railroad corporation does not fall within the rule of the cases which I have cited, I have to say that in the last of them you have expressly decided that a tax on tangible property is not a tax upon the right of a company to exist, the right or franchise of the company to do and transact the business for which it was created. By implication you hold that, had the tax been laid on these franchises, it would have come within the rule announced in United States Bank cases and other cases cited in my brief. By implication as strong and conclusive as positive affirmation, you have admitted that, if it (the tax) be a tax on the franchise—the power of the company to exist and transact business as a corporation—it is within the reason of the rule announced in McCulloch's case, and therefore invalid. We rely upon this implication.

One word in relation to an error into which, in my judgment, this Court has fallen in respect to the power of Congress in respect to the taxation of Federal agencies by the States. Chief Justice Chase, in the first railroad tax case, said: "In the absence of any legislation by Congress prohibiting the taxing of this road or permitting it to be taxed," &c. Here for the first time it is suggested by this Court that it is in the power of Congress to control this question of the taxation of agencies provided by the Government for carrying into execution its powers; that Congress has the power to permit the States to tax them or to prohibit the States from taxing them. I deny that Chief Justice Marshall ever conceded for a moment that the Federal Congress had any power on this subject; it was held to be a purely constitutional question, and that the Consti-

tution of the United States interposed between its agents and the hostile action of the States the shield of its supremacy. I deny the power of Congress to yield and resign to the States the supremacy of the United States. If the States are debarred from taxing a given thing, it is by virtue of the Constitution of the United States, and not by virtue of an act of Congress. If they are allowed to tax a given thing, it is because they are not forbidden by the Constitution of the United States, and not because they are not forbidden by Congress.

1415753b

HE
2771
C2
C6
1882
v.1